NORTH EAST PLANTATIONS SDN BHD A

v.

PENTADBIR TANAH DAERAH DUNGUN & ANOR

COURT OF APPEAL, PUTRAJAYA B
ABU SAMAH NORDIN JCA
HISHAMUDIN MOHD YUNUS JCA
AZHAR MA'AH JCA
[CIVIL APPEAL NO: T-01-77-08]
28 OCTOBER 2010 C

ADMINISTRATIVE LAW: *Remedies - Mandamus - Alienation of State Land - Land alienated to applicant - Alienation revoked by State Authority before registration of title in appellant's name - Appellant already entered into possession of alienated land - Whether appellant had legitimate expectation to be issued with title to alienated land - Whether mandamus to issue* D

LAND LAW: *Alienation - Revocation of alienation - Alienation revoked by State Authority before registration of title in appellant's name - Appellant already entered into possession of alienated land - Whether appellant had legitimate expectation to be issued with title to alienated land - Whether revocation done in bad faith - Whether revocation of alienation null and void - National Land Code ss. 40(a), 48, 78(3), 80(3)* E F

LAND LAW: *Ownership - Alienation of State Land - Alienation revoked by State Authority before registration of title in appellant's name - Appellant already entered into possession of alienated land - Whether appellant had legitimate expectation to be issued with title to alienated land - Whether revocation done in bad faith - Whether revocation of alienation null and void - National Land Code ss. 40(a), 48, 78(3), 80(3)* G

The appellant had applied for alienation of 10,000 acres of reserved forest land in the District of Dungun. The State H Government agreed to approve the application in principle subject to terms and conditions of alienation. The appellant's formal application to the first respondent for alienation was approved. Part of the land approved for alienation, consisting of three lots were then issued with qualified titles and registered in the I appellant's name. As for the remaining 8 lots, documents of titles

had not been issued, but the appellant was issued with 8 notices in Form 5A, under s. 81(2) of the National Land Code ('the Code'), to pay land revenue totalling RM2,052,465.30. Subsequently the State Assembly of the State of Terengganu was dissolved for the general election. During the transitional period, the second respondent issued a letter to all the District Land Administrators in the State of Terengganu to freeze temporarily all matters relating to land administration in the state until further notice. The previous State Government under the rule of PAS lost to Barisan National in the general election. The appellant then attempted to pay the land revenue but the first respondent refused to accept the said payment on the ground that the new State Executive Council had revoked the alienation of the said lots. The appellant thus applied for judicial review seeking, *inter alia*, the following declarations: (a) that the decision of the State Executive Council rejecting the payment of the land revenue and revoking the alienation was null and void, *ultra vires* and of no legal effect; (b) that the appellant was entitled to and be registered as the lawful proprietor of the said 8 lots; (c) an order of *certiorari* revoking the said decision; and (d) an order of *mandamus* to compel the registration of the 8 lots in the name of the appellant. The learned trial judge dismissed the application for judicial review on the grounds that by virtue of s. 78(3) of the Code, the said lots remained as State Land until the registration in the appellant's name and until then the State Authority had absolute right to take whatever action in relation to the said land as it deemed appropriate. The learned judge also held that the appellant had no legitimate expectation that titles would be issued in due course like the other three titles issued earlier. Hence this appeal by the appellant.

Held (dismissing the appeal with costs)

Per Abu Samah Nordin JCA delivering the majority judgment of the court:

(1) The legislature had in clear words enacted that the lands remained as State Land until they were registered in the appellant's name. The process of alienation had not been completed. The document of titles had not been issued to the appellant. Being State Land, it was, by virtue of s. 40(a) of the Code still vested solely in the State Authority. (paras 23 & 34)

(2) Section 48 of the Code makes it clear that no title to State Land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever. It was thus immaterial whether the appellant had prematurely entered into possession of the land or planted the said land with oil palm. The respondents had no authority to bind the State Authority even if permission to enter into possession had been granted by the respondents. (para 23)

(3) There is no express provision in the Code which prohibits the State Authority to revoke or withdraw prior approval of alienation of State Land before the registration of title. The need to revoke had not arisen as the land was still State Land by virtue of s. 78(3) of the Code. The power to revoke was implicit in that subsection itself. Section 80(3) was never intended to supersede s. 78(3) of the Code. (para 25)

(4) One cannot impute bad faith purely on mere refusal to accept payment. The directive issued by the State Director of Lands and Mines was purely administrative in nature. It was done out of prudence to preserve the *status quo* during the transitional period or 'vacuum' pending the formation of the new State Government. It cannot be said that it was done in bad faith when what he did was within his power. (para 28)

(5) The Code expressly prescribes a specific mode for alienation of State Land, lays down the various steps to be taken before the issue of documents of titles and declares that the land shall remain State Land until registration of a register document of title. The rights, duties and liabilities of the State Authority *vis-a-vis* that of the appellant were exhaustively spelt out in the Code. Legitimate expectation cannot override the express statutory provisions of the Code. The appellant had no legitimate expectation that titles would be issued to it when the State Authority had validly revoked the approval of alienation of the said lots. At the time of revocation, the said lots were still State Land. (para 42)

Per Hishamudin Mohd Yunus JCA (dissenting):

(1) There is no provision - expressed or implied - that gives the State Authority the power to revoke an approval to alienate once the Form 5A payment had been made. On the contrary once the Form 5A payment had been made by the appellant,

A the operation of s. 80(3) of the Code was triggered, and it was then mandatory for the Registrar to 'prepare, register and issue a qualified title in respect of the land'. (para 69)

(2) Section 78(3) does not, either expressly or by implication, confer any power to the State Authority to revoke an approval that has already been given at the whim and fancy of the State Authority - or even in a case where there is a change in policy. And all the more so where the statutory Form 5A payment has been duly made pursuant to s. 81(2). All that s. 78(3) says is that alienation of State Land takes effect upon registration, and that the land in question remains State Land pending registration. (para 73)

(3) On the facts of the case, the refusal to accept the payment was unreasonable, unlawful and was done in bad faith. The first time an explanation was given in respect of the purported revocation was when the respondents filed their affidavits after leave to file an application for judicial review had already been obtained by the appellant. The reasons given in the affidavits for the revocation of the approval could not be accepted by the court. There were serious doubts as to whether the reasons given were *bona fide*. (paras 77 & 78)

(4) The revocation of the earlier approval by the new State Executive Council was contrary to the principle of legitimate expectation. There was a legitimate expectation on the part of the appellant that they be issued with the titles in respect of the 8 lots. This was because, relying on the earlier approval by the State Authority, they had already made the statutory Form 5A payment. There was also a legitimate expectation on the part of the appellant to be given reason for the revocation of an earlier approval, particularly, where the statutory payment had already been made. (paras 94-97)

Bahasa Malaysia *Translation Of Headnotes*

Pemohon telah memohon untuk pemberimilikan 10,000 ekar tanah hutan simpanan di Daerah Dungun. Kerajaan Negeri telah bersetuju untuk meluluskan permohonan dari segi prinsip tertakluk kepada terma dan syarat pemberimilikan. Permohonan rasmi pemohon kepada responden pertama bagi pemberimilikan telah diluluskan. Sebahagian dari tanah yang diluluskan bagi pemberimilikan, yang mengandungi tiga lot dikeluarkan dengan hakmilik bersyarat dan didaftarkan di atas nama pemohon. Bagi

lapan lot yang masih kekal, suratan hakmilik tidak dikeluarkan dalam borang 5A, di bawah s. 81(2) Kanun Tanah Negara ('Kanun'), untuk membayar hasil tanah berjumlah RM2,052,465.30. Kemudiannya Dewan Undangan Negeri Terengganu dibubarkan untuk pilihanraya umum. Semasa tempoh peralihan itu, responden kedua mengeluarkan surat kepada semua Pentadbir-Pentadbir Tanah Daerah di dalam Negeri Terengganu untuk membekukan buat sementara waktu segala perkara berhubungan dengan pentadbiran tanah dalam negeri sehingga notis selanjutnya. Kerajaan Negeri sebelum ini di bawah undang-undang PAS telah kalah kepada Barisan Nasional di pilihanraya umum. Perayu kemudiannya cuba membayar hasil tanah tetapi responden pertama tidak menerima bayaran tersebut atas alasan bahawa Majlis Mesyuarat Kerajaan Negeri telah membatalkan pemberimilikan lot-lot tersebut. Perayu oleh itu memohon untuk semakan kehakiman, antara lain, untuk deklarasi-deklarasi berikut: (a) keputusan Majlis Mesyuarat Kerajaan Negeri menolak bayaran hasil tanah dan membatalkan pemberimilikan adalah batal dan tak sah, *ultra vires* dan tiada kesan undang-undang; (b) perayu berhak didaftarkan sebagai tuan punya sah bagi lapan lot-lot tersebut; (c) satu perintah *certiorari* membatalkan keputusan tersebut; dan (d) satu perintah *mandamus* untuk memaksa pendaftaran lapan lot-lot atas nama perayu. Yang arif hakim bicara menolak permohonan semakan kehakiman atas alasan-alasan bahawa mengambilkira s. 78(3) Kanun, lot-lot tersebut kekal sebagai Tanah Kerajaan sehingga pendaftaran dalam nama perayu dan sehingga itu Pihakberkuasa Negeri mempunyai hak mutlak untuk mengambil apa-apa tindakan berhubungan dengan tanah tersebut yang dianggap sesuai. Yang arif hakim juga memutuskan bahawa perayu tidak mempunyai pengharapan sah bahawa hakmilik-hakmilik akan dikeluarkan dalam masa terdekat seperti tiga hakmilik-hakmilik yang telah dikeluarkan sebelum ini. Oleh itu rayuan ini oleh perayu.

Diputuskan (menolak rayuan dengan kos)
Oleh Abu Samah Nordin HMR menyampaikan penghakiman majoriti mahkamah:

(1) Badan Perundangan dalam kata-kata yang jelas menggubalkan bahawa tanah-tanah kekal sebagai Tanah Kerajaan sehingga didaftarkan di atas nama perayu. Proses pemberimilikan belum diselesaikan. Dokumen hakmilik tidak dikeluarkan kepada perayu. Kerana ia adalah Tanah Kerajaan, mengambilkira s. 40(a) Kanun, ia masih diletakhak sepenuhnya di tangan Pihakberkuasa Negeri.

(2) Seksyen 48 Kanun telah memperjelaskan bahawa tiada hakmilik kepada Tanah Kerajaan akan diperolehi oleh milikan, menduduki secara haram atau menduduki di bawah apa-apa lesen untuk apa-apa tempoh. Oleh itu ia adalah tidak penting sama ada perayu telah terlalu awal memasuki milikan tanah tersebut atau menanam tanah tersebut dengan sawit. Responden-responden tidak mempunyai kuasa untuk mengikat Pihakberkuasa Negeri walaupun kebenaran untuk memasuki dalam milikan telah diluluskan oleh responden-responden.

(3) Tiada peruntukan nyata di dalam Kanun yang melarang Pihakberkuasa Negeri dari membatalkan atau mengambilbalik kelulusan pemberimilikan tanah kerajaan yang telah diberi sebelum pendaftaran hakmilik. Keperluan membatalkan tidak berbangkit kerana tanah masih Tanah Kerajaan mengambilkira s. 78(3) Kanun. Kuasa untuk membatalkan adalah tersirat di dalam subseksyen sendiri. Seksyen 80(3) tidak berniat untuk menggantikan s. 78(3) Kanun.

(4) Seseorang tidak boleh menuduh niat jahat hanya atas dasar keengganan menerima bayaran. Arahan yang dikeluarkan oleh Pengarah Tanah dan Galian Negeri adalah bersifat pentadbiran semata-mata. Ia dilakukan atas kecermatan untuk mengekalkan *status quo* semasa tempoh peralihan atau 'vakum' sementara menunggu pembentukan kerajaan negeri baru. Ia tidak boleh dikatakan yang ia telah dilakukan dengan niat jahat apabila apa yang dilakukan adalah dalam kuasanya.

(5) Kanun dengan nyata menentukan satu cara khusus bagi pemberimilikan Tanah Kerajaan, menurunkan pelbagai langkah yang diambil sebelum mengeluarkan dokumen-dokumen hakmilik dan mengisytiharkan tanah itu akan kekal Tanah Kerajaan sehingga pendaftaran suatu daftar dokumen hakmilik. Hak-hak, tugas-tugas dan liabiliti Pihakberkuasa Negeri *vis-a-vis* perayu secara menyeluruh telah diperjelaskan di dalam Kanun. Pengharapan sah tidak boleh mengatasi peruntukan-peruntukan mengikut undang-undang ekspres Kanun. Perayu tidak mempunyai pengharapan sah yang hakmilik-hakmilik akan dikeluarkan kepadanya apabila Pihakberkuasa Negeri telah dengan sah membatalkan kelulusan pemberimilikan lot-lot tersebut. Pada masa pembatalan, lot-lot tersebut masih Tanah Kerajaan.

Oleh Hishamudin Mohd Yunus HMR (menentang):

(1) Tiada peruntukan - nyata atau tersirat - yang memberi Pihakberkuasa Negeri kuasa untuk membatalkan kelulusan bagi pemberimilikan sebaik sahaja bayaran Borang 5A dilaksanakan. Sebaliknya sebaik sahaja Borang 5A telah dibuat oleh perayu, operasi s. 80(3) Kanun telah tercetus, dan ia menjadi mandatori untuk Pendaftar 'menyediakan, mendaftar dan mengeluarkan hakmilik sementara tanah itu'.

(2) Seksyen 78(3) tidak, secara nyata atau tersirat, menganugerahkan apa-apa kuasa kepada Pihakberkuasa Negeri untuk membatalkan kelulusan yang telah diberi sesuka hati Pihakberkuasa Negeri - atau pun dalam kes di mana terdapat perubahan polisi. Dan lebih-lebih lagi apabila bayaran statutori Borang 5A telah dibuat di bawah s. 81(2). Apa yang dinyatakan oleh s. 78(3) adalah pemberimilikan tanah kerajaan mula berkuatkuasa atas pendaftaran, dan bahawa tanah tersebut kekal tanah kerajaan sehingga pendaftaran.

(3) Pada fakta kes, keengganan menerima bayaran tidak munasabah, menyalahi undang-undang dan dilakukan dengan niat jahat. Pertama kali penjelasan diberikan mengenai pembatalan yang dikatakan adalah apabila responden-responden memfailkan afidavit-afidavit selepas kebenaran untuk memfailkan permohonan bagi semakan kehakiman telah diperolehi oleh perayu. Alasan-alasan yang diberi di dalam afidavit-afidavit bagi pembatalan kelulusan tidak boleh diterima oleh mahkamah. Terdapat keraguan-keraguan yang serius sama ada alasan-alasan yang telah diberi adalah *bona fide*.

(4) Pembatalan kelulusan sebelum ini oleh Majlis Mesyuarat Kerajaan Negeri adalah bertentangan dengan prinsip pengharapan sah. Terdapat pengharapan sah pada pihak perayu yang mereka diberi hakmilik ke atas kelapan-lapan lot tersebut. Ini adalah kerana, bergantung kepada kelulusan sebelum ini oleh Pihakberkuasa Negeri, mereka sudah membuat bayaran Borang 5A. Juga terdapat pengharapan sah pada pihak perayu untuk diberi alasan bagi pembatalan kelulusan sebelum ini, terutama sekali, di mana bayaran statutori telah pun dilaksanakan.

Case(s) referred to:

Attorney General of Hong Kong v. Ng Yuen Shiu [1983] 2 AC 629 ***(refd)***

Council of Civil Service Unions & Ors v. Minister for Civil Service [1985] 1 AC 374 ***(refd)***

Cudgen Rutile (No. 2) Pty Ltd & Anor v. Gordon William Wesley Chalk [1975] AC 520 ***(refd)***

Dr Ti Teow Siew & Ors v. Pendaftar Geran-Geran Tanah Negeri Selangor [1981] CLJ 134; [1981] CLJ (Rep) 142 HC ***(refd)***

Government of The State of Negeri Sembilan v. Yap Chong Lan & Ors & Another Case [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144 FC ***(refd)***

Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65 FC ***(refd)***

Pemungut Hasil Tanah, Kota Tinggi v. United Malayan Banking Corp Bhd [1982] CLJ 23; [1982] CLJ (Rep) 244 FC ***(refd)***

Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***

Rahmah Ali & Ismail Awang v. Government of Pahang (Civil Suits No 436, 456 of 1977) (Unreported) ***(refd)***

Sidek Hj Muhamad & Ors v. The Government of The State of Perak & Ors [1982] CLJ 244; [1982] CLJ (Rep) 321 FC ***(refd)***

State of New South Wales v. Bardolph [1934] 52 CLR 455 ***(refd)***

Yeap Seok Pen v. Government of the State of Kelantan [1986] 1 LNS 89 PC ***(refd)***

Legislation referred to:

Evidence Act 1950, s. 101

Federal Constitution, art. 13

National Forestry Act 1984, s. 11

National Land Code, ss. 5, 12(3)(a), (d), 16(2), 40(a), 48, 76, 78(2), (3), 80(3), 81(1), (2), 180(1), 340, 418

National Land Code (Amendment) Act 1984, s. 28

Rules of the High Court 1980, O. 53

Mining Act 1898 [Aus], s. 23A

Other source(s) referred to:

Professor de Smith, *Judicial Review of Administrative Action,* 5th edn, paras 13-035

For the appellant - Tun Salleh Abbas (Abdul Haris Abdul Malik with him); M/s Abdul Haris & Co

For the respondents - Norbahari Baharuddin; State Legal Advisor

[Appeal from High Court, Kuala Terengganu; Judicial Review No: 13-02-2004]

Reported by Amutha Suppayah

JUDGMENT

Abu Samah Nordin JCA:

[1] The issue in this appeal concerns the power of the State Authority to revoke its earlier approval of alienation of State Land under the National Land Code ("the Code"). It is the appellant's contention that the State Authority has no power to revoke its earlier approval of alienation of State Land under the Code. So, when the State Authority revoked its earlier approval of alienation of State Land to the appellant it had in law exceeded its powers under the Code, acted in bad faith and disregarded of the rules of natural justice and the appellant's legitimate expectation.

[2] But before examining the powers of the State Authority in respect of revocation of alienation of State Land under the Code, it is necessary to put the facts in proper perspective. The State Authority of Terengganu is not itself a party to this proceeding. The second respondent is the proper party to this proceeding by virtue of s. 16(2) of the Code. The first respondent, namely the Land Administrator of the District of Dungun, is made a party as the land, which is the subject matter of the dispute, is situated in the District of Dungun, Terengganu.

The Facts

[3] On 26 April 2000 the appellant applied to the then Chief Minister of Terengganu for alienation of 10,000 acres of reserved forest land in the Mukim of Besul and Mukim of Hulu Paka, in the District of Dungun for the purpose of cultivation of oil palm and cattle rearing.

[4] By a letter dated 27 November 2000, the Deputy State Secretary informed the appellant that the State Government had agreed to approve its application in principle subject to terms and conditions of alienation which may be imposed by the second respondent and to the revocation of forest reserved land by the Director of State Forestry. The appellant was accordingly advised to liaise with the Department of Lands and Mines and the Department of Forestry, of Terengganu.

[5] This was followed by a letter dated 11 December 2000 from one Mohd Yasim bin Awang, acting on behalf of the second respondent, informing the appellant that the State Authority had approved its application in principle and advised the appellant to put in a formal application to Pentadbir Tanah Daerah Dungun. The letter reads:

11 December 2000

Pengerusi Eksekutif
North East Plantations Sdn Bhd
No. 5, Jalan 65C, Off Jalan Pahang Barat
Pekeliling Business Centre
53000 Kuala Lumpur.

Tuan,

Permohonan Tanah Kerajaan Untuk Pembangunan Ladang Kelapa Sawit Dan Ternakan Lembu Di Negeri Terengganu Seluas 10,000 Ekar Di Kawasan Hutan Simpan Sungai Paka, Mukim Besol Dan Hulu Paka, Dungun

Dengan hormatnya saya diarah merujuk perkara di atas, sukacita memaklumkan permohonan tuan pada dasarnya telah diluluskan oleh Pihakberkuasa Negeri.

2. Sehubungan dengan itu tuan hendaklah merujuk kelulusan dasar ini dan mengangkat permohonan rasmi kepada Pentadbir Tanah Dungun untuk tindakannya. Pejabat ini akan mengambil tindakan lanjut selepas permohonan yang telah disempurnakan diperolehi daripada Pentadbir Tanah berkenaan.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

t.t

(Mohd Yasim bin Awang)
b.p Pengarah Tanah Dan Galian Terengganu.

[6] The application for alienation of the said lands was subsequently approved by the first respondent. By State Gazette No. 67 dated 14 February 2002, the State Authority also revoked the said forest reserved land with retrospective effect from 15 November 2000.

[7] On 21 May 2003, part of the land approved for alienation, consisting of three lots were issued with qualified titles, namely, HSD 840 (PT3733), HSD 841C (PT3736) and HSD 842C (PT3737) and registered in the appellant's name. They are therefore not the subject matter of dispute between the parties herein.

[8] The dispute is in respect of eight other lots ("the said lots"), consisting of 5 lots in the Mukim of Besul and 3 lots in the Mukim of Hulu Paka, with a total area of 1,627.659 hectares where documents of titles had not been issued to the appellant. These eight lots are identified as PT1548, PT1549, PT1551, PT1558, PT1559, PT3764, PT3765 and PT3767. The first respondent had however on 12 January 2004 issued to the appellant 8 notices in Form 5A to pay land revenue totalling RM2,052,465.30. These notices were issued under s. 81(2) of the Code. The said Form 5A notices were not exhibited in the Appeal Record but they were not in dispute.The covering letter to the appellant dated 11 January 2004 enclosing the said Form 5A notices reads:

> **Dengan Tangan**
>
> Pengurus
> North East Plantations Sdn. Bhd
> No. 66/23, Tingkat Dua Taman Seri Intan
> Jalan Sultan Omar
> 20300 Kuala Terengganu
>
> Tuan,
>
> **Permohonan Pindaan Pelan Kelulusan Majlis Mesyuarat Kerajaan Negeri Terengganu Bil 203B/2002 Bertarikh 30 Januari 2002 Bagi PT. 1541 Mukim Besol Dan PT. 3732 Mukim Hulu Paka Di Kawasan Bandar Al Muktafi Billah Shah, Daerah Dungun**
>
> Dengan hormatnya saya diarah merujuk kepada perkara di atas.
>
> 2. Sukacita dimaklumkan bahawa Majlis Mesyuarat Kerajaan Negeri telah menimbangkan Kertas Mesyuarat Bil. 1586E/2003 bertarikh 10 Disember, 2003 dan bersetuju meluluskan permohonan pindaan pelan kelulusan MMKN.TR. Bil. 203B/2002 bertarikh 30 Januari 2002 dan tuan adalah dikehendaki mengisi semula borang Jadual 1 yang dikembarkan bersama-sama ini dan kembalikan borang tersebut ke Pejabat ini bersekali dengan wang bayaran daftar sebanyak RM10.00 satu lot (13 lot).

3. Bersama-sama ini dikembarkan Borang 5A bagi lot-lot yang telah diberi pembebasan hutan oleh Pejabat Hutan iaitu:

Mukim Besul:

(i) PT. 1548	–	134.90 ha	]
(ii) PT. 1549	–	169.50 ha	]
(iii) PT. 1551	–	421.73 ha	]
(iv) PT. 1558	–	179.45 ha	]
(v) PT. 1559	–	181.10 ha	]
		1,086.78 ha	]
			] 1.627.659 ha

Mukim Hulu Paka:

(i) PT. 3764	–	134.17 ha	]
(ii) PT. 3765	–	70.969 ha	]
(iii) PT. 3767	–	335.74 ha	]
		540.879 ha	]

Dengan dikenakan bayaran serta syarat-syarat seperti di dalam Jadual 5A berkembar dan syarat tambahan sebagaimana berikut:

(i) Kawasan yang diluluskan itu hendaklah dipagar supaya tidak berkeliaran ternakan ke tanah-tanah luar kawasan dan dijagai kawasan tersebut dengan baik.

(ii) Pemohon hendaklah mematuhi arahan-arahan nasihat-nasihat dan syarat-syarat yang dikenakan oleh Pentadbir Tanah, Penguasa-Penguasa Tempatan, Jabatan Alam Sekitar dan Jabatan-Jabatan/Agensi-Agensi lain pada setiap masa.

(iii) Sekiranya terdapat rintahan haram di kawasan tanah yang diluluskan kepada NEP, Pentadbir Tanah Dungun hendaklah berunding dan mencari penyelesaian sebaik-baiknya bagi faedah kedua-dua pihak terlibat iaitu NEP dan peneroka tanah haram. Pihak NEP dikehendaki memaklumkan kepada Pentadbir Tanah Dungun jika sekiranya ada.

4. Perlu diingatkan, pembayaran ini hendaklah dijelaskan dalam masa tiga (3) bulan daripada tarikh penerimaan surat ini. Sekiranya gagal menjelaskan di dalam tempoh tersebut, maka permohonan tuan akan disifatkan sebagai telah ditarik balik dan ketulusan yang telah diberikan itu akan luput dengan sendirinya. Bayaran tersebut hendaklah dibuat dalam dua (2) keping cek:

(i) Hasil Negeri	–	RM2,052,385.30
(ii) Hasil Persekutuan	–	RM 80.00
		RM2,052,465.30

5. Tuan juga hendaklah mengemukakan Sijil Akuan Lembaga Jurukur Tanah semasa membuat pembayaran tersebut.

Sekian, terima kasih.

"Membangun Menurut Islam"

Saya yang menurut perintah,

t.t
(Ibrahim bin Mohamad)
Ketua Penolong Pentadbir Tanah
b.p Pentadbir Tanah
Dungun

[9] The said sum of RM2,052,465.30 was for payment of quit rent, land premiums, survey fees and preparation and registration of land titles ("the land revenue") – The appellant was required to pay the said sum within three months from the receipt of the abovesaid letter.

[10] On 4 March 2004 the State Assembly of the State of Terengganu was dissolved to pave the way for the general election, which was held on 21 March 2004. It was during this transitional period that the second respondent issued a letter dated 23 March 2004 to all the District Land Administrators in the State of Terengganu, to freeze temporarily all matters relating to land administration in the state until further notice, including, among others, the registration of qualified titles and notices/offers to land applicants whose applications had been approved by the State Authority. The material part of the letter reads:

Pelaksanaan Dasar Tanah Negeri

Dengan hormatnya saya merujuk perkara di atas.

2. Sebagaimana dimaklumkan bahawa Pentadbiran Negeri telah bertukar mulai 22 Mac 2004. Selaras dengan itu urusan Pentadbiran Tanah Negeri yang berkaitan dengan yang dinyatakan di bawah hendaklah ditawakof buat sementara sehingga diberitahu kemudian:

2.1. ...

2.2. Pendaftaran Hakmilik Sementara (Hakmilik pertama).

2.3. ...

2.4. ...

2.5. Pengeluaran Lesen Menduduki Sementara.

3. Arahan ini berkuatkuasa serta merta pada tarikh surat ini dikeluarkan.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

t.t
(Haji Hashim bin Mamat)
Pengarah Tanah dan Galian
Terengganu

[11] The previous State Government under the rule of PAS lost to Barisan National in the general election. The new State Executive Council under the succeeding government was only sworn in and appointed by His Highness the Sultan of Terengganu on 25 March 2004. It held its first meeting on 7 April 2004.

[12] It was also during the transitional period, that the appellant by a letter dated 22 March 2004 paid the said sum by way of two bankers cheques, namely:

(1) MBB263354 in the sum of RM2,052,885.30, and

(2) MBB263353 in the sum of RM80.50

[13] The first respondent however refused to accept the said payment and returned the cheques. The appellant then reforwarded the same cheques to the first respondent through its solicitors by a letter dated 24 March 2004. The first respondent, by a letter dated 15 April 2004 rejected the payment and returned the said cheques to the appellant on the ground that the State Executive Council had at its meeting on 7 April 2004 revoked the previous approval of alienation of the said lots. This letter reads:

Surat Kita : PTD/03/15/2001/0001-(28)
Bertarikh : 15 April 2004
Bersamaan : 25 Safar 1425

Dengan Tangan

Pengurus
North East Plantations Sdn. Bhd,
d/a: Tetuan Fariz Halim & Co,
No. 20 Mezzanine Floor,
Taman Sri Intan,
Jalan Sultan Omar,
20300 Kuala Terengganu.

Tuan,

Dengan hormatnya saya diarah merujuk kepada surat tuan FHC/mka/001/04 bertarikh 24 Mac, 2004 mengenai perkara di atas.

2. Dimaklumkan Majlis Mesyuarat Kerajaan Negeri yang bersidang pada 07 April, 2004 telah bersetuju **menolak** bayaran yang telah dikemukakan dan membatalkan pemberian tanah yang telah diluluskan di kawasan Mukim Besul dan Hulu Paka kepada pihak tuan.

3. Bersama-sama ini dikembalikan Cek MBB No. 263353 bertarikh 22 Mac, 2004 berjumlah RM80.50 dan Cek MBB No. 263354 bertarikh 22 Mac, 2004 berjumlah RM2,052,885.20.

Sekian, terima kasih.

"Islam Hadhari Terengganu Bestari"
"Berkhidmat untuk Negara"

Saya yang menurut perintah,

t.t

(Ibrahim bin Mohamad)
Ketua Penolong Pentadbir Tanah
b.p Pentadbir Tanah
Dungun.

[14] Being apparently dissatisfied by the abrupt change of policy of the State Authority under the new State Government, the appellant, after having obtained leave of the court, filed an application for a judicial review under O. 53 of the Rules of the High Court 1980 seeking the following declarations:

(a) That the decision of the State Executive Council on 7 April 2004 in rejecting the appellant's payment of RM80.50 and RM2,052,885.30 for land revenue and revoking the alienation of the land which had been previously approved was null and void, *ultra vires* and of no legal effect;

(b) That the appellant is entitled to and be registered as the lawful proprietor of the said eight lots;

(c) Further or alternatively, an order of *certiorari* be issued by the court revoking the said decision;

(d) Further or alternatively an order of *mandamus* be issued to compel the respondents to accept the said payment and to take all the necessary steps to register the said eight lots in the name of the appellant;

(e) Damages;

(f) Exemplary damages;

(g) Punitive damages; and

(h) Costs

[15] The learned trial judge dismissed the appellant's application for judicial review with costs. He was of the view that by virtue of s. 78(3) of the Code, the said lots remained as State Land until the registration of document of title in the appellant's name notwithstanding the said alienation. Until then, the State Authority had absolute right to take whatever action in relation to the said land as it deems appropriate. He disagreed with the appellant's contention that the document of titles should be issued as a matter of course pursuant to s. 80(3) and 81(1) of the Code once notices to pay land revenue in Form 5A had been issued and payment made by the appellant. He held that although payment was made, it was rejected by the State Authority. He found that there was no evidence of *mala fide* as alleged. It was a mere perception on the part of the appellant.

[16] With regard to legitimate expectation, the learned judge held that the appellant had no legitimate expectation that titles would be issued in due course like the other three qualified titles issued earlier, in view of s. 78(3) of the Code that the said lots remained as State Land until registration.

[17] The appellant's appeal before us is against the dismissal of its application for judicial review by the learned judge.

Alienation Of State Land

[18] The appellant's main contention is that the State Authority has no power under the Code to revoke or withdraw the approval of the alienation of State Land which had been approved earlier. Such power is not provided for under the Code. This contention is further fortified by the fact that the first respondent had, pursuant to s. 81(2) of the Code issued notices in Form 5A to the appellant to pay the land revenue due, which payment had in fact been made. As such by reason of s. 80(3) of the Code, the respondents, to be precise the first respondent, is statutorily bound to issue the qualified titles. It was submitted that the word "shall" in s. 80(3) of the Code is mandatory in nature. The respondent had no choice but to issue the qualified titles.

[19] For convenience, s. 78(3), 80(3) and 81(2) of the Code are reproduced below.

> 78(3) The alienation of State Land shall take effect upon the registration of a register document of title thereto pursuant to the provisions referred to in subsection (1) or (2), as the case may be; and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State Land until that time.
>
> 80(3) Subject to subsection (2) of section 81, upon the approval of the alienation of any land by the State Authority under this Act and upon payment of all fees the Registrar shall prepare, register and issue a qualified title in respect of the land.
>
> 81(2) As soon as may be after any sums have become due in respect of any land by virtue of subsection (1), the Land Administrator shall, by notice in Form 5A, require the intended proprietor to pay them to him within the time specified in that behalf in the notice, and if any such sum is not so paid within the specified time, the approval of the State Authority to the alienation shall thereupon lapse.

[20] The word 'alienate' is defined in s. 5 of the Code:

> "alienate" means to dispose of State Land in perpetuity or for term of years, in consideration of the payment of rent, and otherwise in accordance with the provisions of section 76 or, when used in relation to the period before the commencement of this Act, to dispose of State Land in perpetuity or for a term of years under a previous land law (not being a law relating to mining)

When does alienation take effect under s. 76 of the Code? Hashim Yeop A. Sani J (as he then was) in *Dr. Ti Teow Siew & Ors v. Pendaftar Geran-Geran Tanah Negeri Selangor* [1981] CLJ 134; [1981] CLJ (Rep) 142 at p. 144 said:

> Section 78(3) of the Code determines when an alienation of State Land take effect and it is clear from that subsection that alienation takes effect upon registration

[21] Abdoolcader FJ in *Government Of The State Of Negeri Sembilan v. Yap Chong Lan & Ors. & Another Case ("Lesco Case")* [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144 at pp. 149-150 held the same view:

> ... section 78(3) provides that the alienation of State Land shall take effect upon the registration of a register document of title thereto pursuant to the provisions referred to in subsection (1) or (2), and notwithstanding that its alienation has been approved by the State Authority, the land shall remain State Land until that time.

[22] In *Rahmah bt Ali & Ismail bin Awang v. Government of Pahang (High Court (Kuantan)* Civil Suits No 436 and 456 of 1977) Razak J, dismissed the plaintiff's contention that the defendant could not revoke the approval of alienation after payment of premium and other fees had been made. The defendant nevertheless withdrew its earlier approval and refunded the payment. Razak J said:

> It is a fact that although the land had been approved for alienation, it had never been registered. The land, in other words, is still State Land and the plaintiff's have no title to it. The defendant could therefore repossess it at any time they so choose.

The appellant however sought to distinguish the abovesaid case on the ground that s. 80 of the Code at that time was different from the current s. 80(3) of the Code and that the issue of legitimate expectation was not canvassed in that case.

[23] In our judgment, all the abovesaid cases reaffirmed what the legislature had, in clear words, enacted that the lands remain as State Land unless and until registration, or as in this case, until they are registered in the appellant's name. There is no doubt that the process of alienation had not been completed. The document of titles had not been issued to the appellant. Being State Land, it is, by virtue of s. 40(a) of the Code still vested solely in the State Authority. Section 48 of the Code makes it clear that no title to State Land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever. It is immaterial whether the appellant had prematurely entered into possession of the land and claimed to have planted some 693.408 hectares of the land originally approved in principle for alienation with oil palm. The respondents had no authority to bind the State Authority even if permission to enter into possession, as alleged in the appellant's submission, had been granted by the respondents: see *Lesco case*, *supra*, *Sidek Hj Muhamad & Ors. v. The Government Of The State Of Perak & Ors.* [1982] CLJ 244; [1982] CLJ (Rep) 321. The affidavit evidence shows that there was no written approval to support that contention.

Notices In Form 5A

[24] It is further contended that the State Authority is duty bound under the Code to issue the qualified titles after payment of land revenue was made to the first respondent. The contention is based on s. 80(3) of the Code which states that, "upon payment of all fees the Registrar shall prepare, register and issue a qualified title in respect of the land". The word "shall" in that subsection, it was submitted, makes it mandatory for the Registrar to issue the qualified title upon payment being made by the appellant pursuant to Form 5A notices, within the specified time. As such the State Authority had no power to revoke the approval for alienation.

[25] Upon a close scrutiny of the Code, it appears that there is no express provision therein which prohibits the State Authority to revoke or withdraw prior approval of alienation of State Land before the registration of a register document of title. The wording of s. 78(3) of the Code tends to suggest that such provision is not necessary. The need to revoke has not arisen as the land is still State Land by virtue of the said section. The contention that the State Authority cannot revoke the approval for alienation of State Land once approved goes against the grain of s. 78(3) itself.

A The power to revoke is implicit in that subsection itself. It is absurd to say that the State Authority has lost control over the land after alienation when s. 78(3) plainly states that it is still its land until registration.

B **[26]** Section 80(3) of the Code cannot be read in isolation. It must be viewed against the whole scheme of the Code. The purpose of s. 80(3), which was introduced in 1984 by the National Land Code (Amendment) Act 1984 (Act A587) was to cut down unnecessary delay in the issuance of qualified titles once C payment of the land revenue as specified in Form 5A had been made. Section 80(3) however does not impose a deadline for registration. Prior to that there was no such requirement. The amendment was not intended to take away or curtail the power of the State Authority in dealing with its land as it is, in law, still D State Land until registration of title in the name of the appellant. It may, prior to registration decide to change or reverse its decision so long as it is done in the interest of the state or the public and made in good faith. Section 80(3) which only came into force in 1984 was never intended to supercede s. 78(3) of E the Code.

[27] It is apparent that even on the facts of the case alone, the appellant could not succeed. The sole authority on State Land is the State Authority: see s. 40 of the Code. The first respondent F had to return the payment to the appellant as the State Authority refused to accept it and had decided to revoke the approval of alienation of the said land. Under the circumstances the first respondent could not therefore proceed with the issue of qualified title under s. 80(3) of the Code, The first respondent's refusal to G accept payment after keeping the cheques for about two weeks prior to the decision of the State Authority on 7 April 2004 was understandable. The payment was made during the transitional period before the new State government was sworn in. This was not a case where the previous state government before the H dissolution of the State Assembly had been returned to power with a fresh mandate after the election. It was a complete change of government from the previous government under the rule of PAS to a new government under the Barisan National. The respondents being mere government servants, may want to wait I for further instructions. It was due to the change in the government that prompted Haji Hashim bin Mamat, to issue the instructions dated 23 March 2004 to all District Land Administrators to freeze temporarily certain matters pertaining to administration of land in the state.

[28] One cannot impute bad faith purely on mere refusal to accept payment. The directive issued by the State Director of Lands and Mines was purely administrative in nature. It was done out of prudence to preserve the *status quo* during the transitional period or 'vacuum' pending the formation of the new state government. Section 12(3)(a) of the Code states that the State Director of Lands and Mines is responsible to the State Authority for the due administration within the state of the provisions of the Code. Under s. 12(3)(d), the State Director of Lands and Mines is empowered to exercise general control and supervision of his officers. It cannot be said that it was done in bad faith when what he did was within his power. The definition of 'State Director' in s. 5 of the Code includes a Deputy Director of Lands and Mines.

[29] *Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143 is clearly distinguishable. The subject matter was not State Land. It was in respect of alienated land where title in perpetuity had already been issued and registered in the respondent's name. The issue in that case was whether the Land Executive Committee of the Federal Territory had the right to impose a condition pursuant to the respondent's application for conversion and subdivision, that the respondent would get back his titles, not in perpetuity but a lease of 99 years. The respondent, being dissatisfied, appealed to the High Court under s. 418 of the Code. Harun J allowed the appeal. The appellant appealed to the Federal Court. The Federal Court dismissed the appeal holding that the appellant had no power to make the respondent give up its freehold title and receive in exchange a 99 year lease.

[30] The burden of proof to establish bad faith is on the appellant: see s. 101 Evidence Act 1950, *Yeap Seok Pen v. Government of the State of Kelantan* [1986] 1 LNS 89. Upon perusal of the appellant's affidavits, we find that there is no evidence to support such allegation. It is based on suspicion or conjecture. The Code does not require the State Authority to give reasons for the said revocation. There is no express provision to that effect. Nevertheless, the second respondent in his affidavit-in-reply explained, among others, that the revocation was due to the need to maintain forest sustainability and this view was formed after having considered the various technical reports from the relevant departments. It must be noted that the land approved in principle for alienation was in fact a permanent forest reserve. The

A revocation such forest reserved land would in fact reduced the size of forest reserved land in the state, which could have adverse effect on the ecosystem and natural habitat in the state.

Legitimate Expectation

B **[31]** The basis of the appellant's contention that it had a legitimate expectation that qualified titles to the said lots would be issued is based on the facts that the State Authority had approved the alienation of the said land to it and that it had duly paid the sum due pursuant to Form 5A notices within time. C Section 80(3) of the Code provides that upon payment of all fees the Registrar shall prepare, register and issue a qualified title in respect of the land. It was submitted that 'legitimate expectation' includes expectation which goes beyond legal right provided it has some reasonable basis: See *Attorney General of Hong Kong v. Ng* D *Yuen Shiu* [1983] 2 AC 629.

[32] In *Council of Civil Service Unions & Ors v. Minister for Civil Service* [1985] 1 AC 374 Lord Fraser of Tullybelton said:

> E But even where a person claiming some benefit or privilege has no legal right to it as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the Courts will protect his expectation by judicial review as a matter of public law.

F **[33]** Lord Diplock, in the same case at p. 408 said that for a legitimate expectation to arise the decision must affect the other person either:

> (a) by altering rights or obligations of that person which are G enforceable by or against him in private law; or
>
> (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been H communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision - maker will not be withdrawn without giving him an opportunity of advancing reasons for contending that they should not be withdrawn.

I

[34] What the appellant is claiming here is not just a right to a fair hearing before the State Authority revoked its approval of alienation of the said land. Its complaint is not confined to procedural impropriety on the part of the State Authority. It goes beyond that. It expects to get the 'substance' of the expectation itself, namely, the qualified titles to the said lots once it had shown that it was deprived of its legitimate expectation.

[35] Decided cases however had shown that the doctrine of legitimate expectation cannot be applied indiscriminately in all cases. It does not apply to every single case of denial of a fair hearing or opportunity to make representation before a decision is made. Thus in *Council of Civil Service Unions & Ors v. Minister for Civil Service, supra* the House of Lords held that the appellants had no legitimate expectation to prior consultation before the minister varied the terms and conditions of service of the staff to the effect that they would no longer be permitted to belong to national trade unions on the grounds of national security. Lord Diplock at p. 412 said:

> National security is the responsibility of the executive government ... It is par excellence a non-justiciable question. The judicial process is totally inept to deal with the sort of problems which it involves.

[36] It had not been shown to us that the denial of a right of fair hearing or the opportunity to make representation, which Lord Diplock referred to as "procedural impropriety" would entitle the appellant to the actual substance of the expectation, which in this case, is the qualified titles to the said lots. No case was cited to us in support thereof. The basis of the appellant's contention here is that it had a legitimate expectation to the titles of the said lots by reason of s. 80(3) of the Code after having made the payment as specified in Form 5A notices, within time. In short, the appellant insisted that the respondents must perform their duty by issuing titles to the said lots.

[37] In our judgment, this proposition cannot be sustained in the face of expressed provision in s. 78(3) of the Code. Section 80(3) of the Code should not be considered in isolation. It must be viewed in the context of the whole scheme of the Code. The land law, which is codified in the Code is based on a system of registration. Section 40 of the Code vests the entire property of all State Land in the State Authority. Section 78(3) states that alienation of State Land shall only take effect upon the registration

of a register document of title. The appellant does not acquire indefeasible title to the land under s. 340 of the Code until it is registered in its name.

[38] There is ample authority that a public body cannot exercise its powers or discretion contrary to the statute. In *Cudgen Rutile (No. 2) Pty Ltd & Anor v. Gordon William Wesley Chalk* [1975] AC 520 PC, an Australian case, referred to by the Federal Court in *Lesco* case, the Privy Council held that the Crown in Australia could not contract for the disposal of any interest in Crown lands except in accordance with powers conferred by a statute and accordingly, where a statute prescribed a mode of exercise of the statutory power that had to be observed.

[39] In that case the appellants carried on the business of mineral sand mining in Queensland. The appellants were holders of an authority to prospect, granted under s. 23A of the Mining Act 1898 by the Minister of Mines in respect of an area of approximately 18 square miles, which was renewable for a further period of one year. On their application for renewal, the Minister granted the renewal to prospect on the Crown lands for all minerals other than coal, mineral oil and petroleum. When the appellants discovered large mineral deposits on the Crown lands, they applied for special mineral leases in respect of the minerals so discovered. The Mining Warden, who heard the applications recommended that the leases should be granted but the government refused to grant any.

[40] The appellants then instituted proceedings, claiming, *inter alia*, specific performance of the contract which they alleged existed to grant them the leases. The issue of law before the Privy Council turned on the power of the Crown to dispose Crown land, by lease. It was submitted on behalf of the Crown that it could not contract for the disposal of any interest in Crown lands unless under and in accordance with power to the effect conferred by statute. Lord Wilberforce agreed with the Crown's contention and at p. 533 said:

> ... when a statute, regulating the disposal of Crown lands, or of an interest in them, prescribes a mode of exercise of the statutory power, that mode must be followed and observed, and if it contemplates the making of decisions, or the use of discretions, at particular stages of the statutory process, those decisions must be made, and discretions used, at the stages laid down. From this in turn it must follow that the freedom of the Minister or officer of the Crown responsible for implementing the statute to make

> his decisions, or use his discretions, cannot validly be fettered by anticipatory action and if the Minister or officer purports to do this, by contractually fettering himself in advance, his action in doing so exceeds his statutory powers.

[41] The Privy Council in that case approved what Rich J said in *State of New South Wales v. Bardolph* [1934] 52 CLR 455, 496. Rich J said:

> When the administration of particular functions of government is regulated by statute and the regulation expressly or impliedly touches the power of contracting, all statutory conditions must be observed and the power no doubt is no wider than the statute contemplates.

[42] Similarly, in this appeal there is a statute namely, the Code which expressly prescribes a specific mode for alienation of State Land, lays down the various steps to be taken before the issue of documents of titles and declares that the land shall remain State Land until registration of a register document of title. The rights, duties and liabilities of the State Authority *vis-a-vis* that of the appellant has been exhaustively spelt out in the Code. Abdoolcader J in delivering the judgment of the Federal Court in *Pemungut Hasil Tanah, Kota Tinggi v. United Malayan Banking Corp. Bhd.* [1982] CLJ 23; [1982] CLJ (Rep) 244, pointed out that, "The relevant provisions of the Code provide a complete code regulating the respective rights, duties and liabilities of the State Authority and its agents on the one hand and the registered proprietor of alienated land on the other hand in relation to the rent payable in respect thereof and no recourse can legitimately be had to look beyond their specific terms to seek any relief for the hardship". Although that observation was made in respect of forfeiture of alienated land for non-payment of rent, the Code also represents a complete code regulating the respective rights, duties and liabilities of the State Authority in respect of State Land *vis-a-vis* that of the appellant.

[43] In our judgment, legitimate expectation cannot and should not, override the express statutory provisions of the Code. The appellant here is in a worse situation. It has no legitimate expectation that titles would be issued to it when the State Authority had validly revoked the approval of alienation of the said lots. At the time of revocation, the said lots were still State Land.

[44] The outcome is inevitable. For the abovesaid reasons the appeal is dismissed with costs. My learned brother Azhar @ Izhar bin Haji Ma'ah, JCA had seen this judgment in draft and expressed his agreement with it.

Hishamudin Mohd Yunus JCA:

[45] This is an appeal against the decision of the learned High Court Judge of Kuala Terengganu who on 20 May 2008 had dismissed the appellant's application for judicial review pursuant to O. 53 of the Rules of the High Court 1980.

[46] Before the learned High Court Judge, the appellant had, pursuant to O. 53, applied for, *inter alia*, the following reliefs:

(a) A declaration that the decision of the State Executive Council of Terengganu of 7 April 2004 rejecting the payment of premium made by the appellant and revoking the alienation of lands, which had previously been approved by the said State Executive Council in favour of the appellant, and made known to the appellant *vide* the first respondent's letter of 15 April 2004, is invalid, null and void and *ultra vires* and is of no legal effect.

(b) A declaration that the appellant is entitled to be registered as the lawful owner of the lots in question, namely, PT1548, PT1549, PT 1551, PT 1558, PT 1559 situate in the Mukim of Besul, District of Dungun, and PT 3764, PT 3765, PT 3767 in the Mukim of Hulu Paka, District of Dungun.

(c) A writ of *certiorari* be issued to quash the decision of the State Executive Council of 7 April 2004.

(d) That the respondents be ordered to accept the payment of premium and to register the appellant as the proprietor of the said lots.

[47] I have allowed the appeal with costs. The following are my grounds.

Undisputed Facts Of The Case

[48] I shall begin by setting out the undisputed facts of the case. On 26 April 2000 the appellant company applied to the State Government of Terengganu for the alienation of 10,000 acres of reserved forest land in two mukims, namely, the Mukim of Besul and Mukim of Hulu Paka, all in the district of Dungun, for the purpose of planting palm trees and cattle rearing.

[49] On 27 November 2000, the State Government approved the application in principle subject:

(a) to certain conditions to be imposed by the State Director of Lands and Mines; and

(b) to the excising of the area of forest reserve land in question from the permanent forest reserve area by the State Director of Forestry, pursuant to s. 11 of the National Forestry Act, 1984.

[50] The approval letter dated 27 November 2000 issued by the office of the State Secretary reads:

Ruj. Kita : UEN.TR.005/01/279-(20)
Tarikh : 27 November 2000

Pengerusi Eksekutif

North East Plantations Sdn Bhd
No. 5, Jalan 65C, Off Jalan Pahang Barat
Pekeliling Business Centre
53000 Kuala Lumpur

Tuan,

Permohonan Tanah Kerajaan Untuk Pembangunan Ladang Kelapa Sawit Dan Ternakan Lembu Di Negeri Terengganu

Adalah saya diarah merujuk kepada perkara di atas, dengan hormatnya dimaklumkan bahawa pihak Kerajaan telah bersetuju meluluskan secara dasar kawasan seluas 10,000 ekar untuk Pembangunan Ladang Kelapa Sawit dan Ternakan Lembu tertakluk kepada syarat-syarat pelupusan yang dikenakan oleh Pengarah Tanah dan Galian Terengganu serta pembatalan Warta Kawasan Hutan Simpan oleh Pengarah Perhutanan Negeri.

2. Pihak tuan dinasihatkan untuk menghubungi kedua-dua Jabatan ini untuk mengetahui perkembangan selanjutnya.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

tt
(Dato' Tengku Hassan bin Tengku Omar)
Timbalan Setiausaha Kerajaan (Pembangunan)
b.p. Setiausaha Kerajaan
Terengganu

[51] On 11 December 2000, the appellant's application was approved in principle by the State Authority. The letter reads:

PTG.TR.00/01/2000/11/01-(19) 11 December 2000

Pengerusi Eksekutif
North East Plantations Sdn Bhd
No. 5, Jalan 65C, Off Jalan Pahang Barat
Pekeliling Business Centre
53000 Kuala Lumpur

Tuan,

Permohonan Tanah Kerajaan Untuk Pembangunan Ladang Kelapa Sawit Dan Ternakan Lembu Di Negeri Terengganu Seluas 10,000 Ekar Di Kawasan Hutan Simpan Sungai Paka, Mukim Besol Dan Hulu Paka, Dungun

Dengan hormatnya saya diarah merujuk perkara di atas, sukacita memaklumkan permohonan tuan pada dasarnya telah diluluskan oleh Pihakberkuasa Negeri.

2. Sehubungan dengan itu tuan hendaklah merujuk kelulusan dasar ini dan mengangkat permohonan rasmi kepada Pentadbir Tanah Dungun untuk tindakannya. Pejabat ini akan mengambil tindakan lanjut selepas permohonan yang telah disempurnakan diperolehi daripada Pentadbir Tanah berkenaan.

Sekian, terima kasih.

"Berkhidmat Untuk Negara"

Saya yang menurut perintah,

tt

(Mohd Yasim bin Awang)
b.p. Pengarah Tanah Dan Galian
Terengganu

[52] In the meantime, and as a follow-up to the approval in principle, the appellant was asked by the second respondent to put in a formal application for the alienation of State Land.

[53] Subsequently, the affected areas were excised by the State Authority from the permanent reserved forest areas; and the areas became State Land.

[54] Pursuant to the formal application by the appellant for the alienation of State Land, on 25 April 2001 the then State Director of Lands and Mines, one Dato' Haji Ibrahim bin Abd Rahman, chaired a meeting of a technical committee comprising officers representing seven Government Departments to hear their views on the suitability and viability of the appellant's proposed project, whose views would then be submitted to the State Executive Council for its final decision. None of the Government Departments, in their written comments submitted to the State Director, objected to the project, although some of the Departments recommended that certain conditions be imposed on the project to avoid or minimize any adverse impact the project might have on wild life and the environment.

[55] On 21 May 2003, three lots, namely, lots HSD 840 (PT3733), HSD 841 (PT 3736) and HSD 842 (PT 3737), all in the Mukim of Hulu Paka, were issued with titles and alienated to the appellant.

[56] Subsequently, in January 2004 the appellant was issued with 8 Form 5A notices each dated 12 January 2004 pursuant to s. 81(2) of the National Land Code requiring the appellant to make payment of premiums. These Form 5A notices were in respect of another eight lots whose alienation to the appellant had been approved by the State Authority. The payments were to be made within three months from the date of the notices.

[57] Subsection (2) of s. 81 prescribes:

> (2) As soon as may be after any sums have become due in respect of any land by virtue of subsection (1), the Land Administrator shall, by notice in Form 5A, require the intended proprietor to pay them to him within the time specified in that behalf in the notice; and if any such sum is not so paid within the specified time, the approval of the State Authority to the alienation shall thereupon lapse.

[58] The covering letter of the first respondent (dated 11 January 2004) that accompanies the Form 5A notices, signed by one Encik Ibrahim bin Mohamad, the Chief Assistant District Land Administrator, Dungun, reads:

A

Bertarikh : 11 Januari 2004
Bersamaan : 18 Zulkaedah 1424

Dengan Tangan

Pengurus

B

North East Plantations Sdn. Bhd
No. 66/23, Tingkat Dua Taman Seri Intan
Jalan Sultan Omar
20300 Kuala Terengganu

C Tuan,

Permohonan Pindaan Pelan Kelulusan Majlis Mesyuarat Kerajaan Negeri Terengganu Bil 203B/2002 Bertarikh 30 Januari 2002 Bagi PT. 1541 Mukim Besol Dan PT. 3732 Mukim Hulu Paka Di Kawasan Bandar Al Muktafi Billah Shah, Daerah Dungun

D

Dengan hormatnya saya diarah merujuk kepada perkara di atas.

2. Sukacita dimaklumkan bahawa Majlis Mesyuarat Kerajaan Negeri telah menimbangkan Kertas Mesyuarat Bil. 1586E/2003 bertarikh 10 Disember, 2003 dan bersetuju meluluskan permohonan pindaan pelan kelulusan MMKN.TR. Bil. 203B/2002 bertarikh 30 Januari 2002 dan tuan adalah dikehendaki mengisi semula borang Jadual 1 yang dikembarkan bersama-sama ini dan kembalikan borang tersebut ke Pejabat ini bersekali dengan wang bayaran daftar sebanyak RM10.00 satu lot (13 lot).

E

F

3. Bersama-sama ini dikembarkan Borang 5A bagi lot-lot yang telah diberi pembebasan hutan oleh Pejabat Hutan iaitu:

Mukim Besul:

G

(i) PT. 1548 – 134.90 ha]

(ii) PT. 1549 – 169.50 ha]

(iii) PT. 1551 – 421.73 ha]

H (iv) PT. 1558 – 179.45 ha]

(v) PT. 1559 – 181.10 ha]

1,086.78 ha]

I

1,627.659 ha]

Mukim Hulu Paka:

(i) PT. 3764 – 134.17 ha]

(ii) PT. 3765 – 70.969 ha]

(iii) PT. 3767 – 335.74 ha

———————

540.879 ha]

=========

dengan dikenakan bayaran serta syarat-syarat seperti di dalam Jadual 5A berkembar dan syarat tambahan sebagaimana berikut:

(i) Kawasan yang diluluskan itu hendaklah dipagar supaya tidak berkeliaran ternakan ke tanah-tanah luar kawasan dan dijagai kawasan tesebut dengan balik.

(ii) Pemohon hendaklah mematuhi arahan-arahan nasihat-nasihat dan syarat-syarat yang dikenakan oleh Pentadbir Tanah, Penguasa-Penguasa Tempatan, Jabatan Alam Sekitar dan Jabatan-Jabatan/Agensi-Agensi lain pada setiap masa.

(iii) Sekiranya terdapat rintahan haram di kawasan tanah yang diluluskan kepada NEP, Pentadbir Tanah Dungun hendaklah berunding dan mencari penyelesaian sebaik-baiknya bagi faedah kedua-dua pihak terlibat iaitu NEP dan peneroka tanah haram. Pihak NEP dikehendaki memaklumkan kepada Pentadbir Tanah Dungun jika sekiranya ada.

4. Perlu diingatkan, pembayaran ini hendaklah dijelaskan dalam masa tiga (3) bulan daripada tarikh penerimaan surat ini. Sekiranya gagal menjelaskan di dalam tempoh tersebut, maka permohonan tuan akan disifatkan sebagai telah ditarik balik dan kelulusan yang telah diberikan itu akan luput dengan sendirinya. Bayaran tersebut hendaklah dibuat dalam dua (2) keping cek:

(i) Hasil Negeri – RM2,052,385.30

(ii) Hasil Persekutuan – RM 80.00

———————

RM2,052,465.30

==========

5. Tuan juga hendaklah mengemukakan Sijil Akuan Lembaga Jurukur Tanah semasa membuat pembayaran tersebut.

Sekian, terima kasih.

"Membangun Menurut Islam"

Saya yang menurut perintah,

tt.
(Ibrahim bin Mohamad)
Ketua Penolong Pentadbir Tanah
b.p. Pentadbir Tanah
Dungun

s.k.

(i) Jurukur Dinamik
111-c, Tingkat Dua, Jalan Batas Baru
23000 Kuala Terengganu

(ii) Fail PTD/03/15/2001/001
(iii) Fail PTD/03/15/2001/002
(iv) Fail PTD/03/15/2001/006
(v) Fail Timbul

[59] These eight lots are the subject-matter of the present appeal.

[60] On 21 March 2004, a General Election was held in Malaysia. The PAS State Government of Terengganu was defeated by the Barisan Nasional party in the General Election. But the new State Executive Council was not appointed by Highness the Sultan of Terengganu until 25 March 2004.

[61] Upon being appointed, the new State Executive Council held its first meeting on 7 April 2004.

[62] Meanwhile, on 22 March 2004, in response to the statutory Form 5A notices, an officer of the appellant went to the Land Office Dungun to pay the premiums as required by the said Form 5A notices and s. 81 of the NLC. But the first respondent refused to accept the payment; but, rather strangely, no reason was given for the refusal.

[63] However, the following day, that is to say, on 23 March 2004, a Deputy State Director of Lands and Mines, one Hj. Hashim bin Mamat, representing himself as the 'State Director of Lands and Mines' issued a directive freezing all land transactions on land administration of the State until further notice. No reason was given for such a directive. The directive also does not state as to under which provision of law it was issued; or who directed him to issue such a directive. The directive reads:

1 Safar 1425 A
23 Mac 2004

Pentadbir Tanah
Kuala Terengganu

Pentadbir Tanah B
Kemaman

Pentadbir Tanah
Dungun

Pentadbir Tanah C
Besut

Pentadbir Tanah
Hulu Terengganu

Pentadbir Tanah D
Marang

Pentadbir Tanah
Setiu

Tuan, E

Pelaksanaan Dasar Tanah Negeri

Dengan hormatnya saya merujuk perkara di atas.

2. Sebagaimana dimaklumkan bahawa Pentadbiran Negeri telah F
bertukar mulai 22 Mac 2004. Selaras dengan itu urusan Pentadbiran Tanah Negeri yang berkaitan dengan yang dinyatakan di bawah hendaklah ditawakof buat sementara sehingga diberitahu kemudian:

2.1. Penyediaan kertas kerja untuk dibawa ke Mesyuarat Majlis G
Mesyuarat Kerajaan Negeri.

2.1.1. Berkaitan dengan pelupusan tanah secara permohonan pemastautin tanpa hak Rancangan Tanah Berkelompok, permohonan biasa, permohonan tanah dalam kawasan industri dan permohonan Lesen Menduduki Sementara. H

2.1.2. Permohonan bagi tujuan pengambilan balik tanah di bawah Akta Pengambilan Balik Tanah 1960.

2.1.3. Permohonan Tanah Galian di bawah Enakmen Mineral Negeri. I

2.1.4. Permohonan Pengeluaran Hakmilik di bawah Akta Tanah (Kawasan Penempatan Berkelompok/GSA) 1960.

2.2. Pendaftaran Hakmilik Sementara (Hakmilik pertama).

2.3. Pemberitahuan / tawaran kepada pemohon/peserta berjaya bagi tanah yang telah diluluskan oleh Pihakberkuasa Negeri.

2.4. Pengeluaran Jadual 5A.

2.5. Pengeluaran Lesen Menduduki Sementara.

3. Arahan ini berkuatkuasa serta merta pada tarikh surat ini dikeluarkan.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

tt

(Haji Hashim bin Mamat)
Pengarah Tanah dan Galian
Terengganu

s.k.

Yang Berhormat
Setiausaha Kerajaan
Terengganu

Yang Berhormat
Penasihat Undang-undang Negeri
Terengganu

[64] Notwithstanding the refusal of the first respondent to accept payment on 22 March 2004, on 24 March 2004, the solicitors of the appellant, Messrs Fariz Halim & Co., on behalf of the appellant, made the Form 5A payment by submitting two cheques to the first respondent. The first respondent, upon receipt of the payment, did not process or acted on the payment; nor did he immediately return the cheques to the appellant. Instead, he kept the two cheques. But three weeks later he returned the cheques to the appellant by post, accompanied with a letter stating that the payment was rejected and that the earlier alienation approval had been revoked by the new State Executive Council at its meeting on 7 April 2004. The letter of the first respondent dated 15 April 2004 reads:

Dengan Tangan

Pengurus
North East Plantations Sdn. Bhd
d/a: Tetuan Fariz Halim & Co.
No. 20, Mezzanine Floor
Taman Sri Intan
Jalan Sultan Omar
20300 Kuala Terengganu

Tuan,

Permohonan Pindaan Pelan Kelulusan Majlis Mesyuarat Kerajaan Negeri Terengganu Bil 2033/2002 Bertarikh 30 Januari 2002 Bagi PT. 1541 Mukim Besol Dan PT. 3732 Mukim Hulu Paka Di Kawasan Bandar Al Muktafi Billah Shah, Daerah Dungun

Dengan hormatnya saya diarah merujuk kepada surat tuan FHC/mka/001/04 bertarikh 24 Mac, 2004 mengenai perkara di atas.

2. Dimaklumkan Majlis Mesyuarat Kerajaan Negeri yang bersidang pada 07 April 2004 telah bersetuju MENOLAK bayaran yang telah dikemukakan dan membatalkan pemberian tanah yang telah diluluskan di kawasan Mukim Besul dan Hulu Paka kepada pihak tuan.

3. Bersama-sama ini dikembalikan Cek MBB No. 263353 bertarikh 22 Mac, 2004 berjumlah RM80.50 dan Cek MBB No. 263354 bertarikh 22 Mac, 2004 berjumlah RM2,052,885.30.

Sekian, Terima kasih.

"Islam Hadhari Terengganu Bestari"
"Berkhidmat Untuk Negara"

Saya yang menurut perintah,

t.t.

(Ibrahim bin Mohamad)
Ketua Penolong Pentadbir Tanah
b.p. Pentadbir Tanah
Dungun

[65] It is to be recalled that the new State Executive Council was appointed on 25 March 2004 and held its first meeting on 7 April 2004.

[66] In communicating the purported revocation of the earlier approval to the appellant, the first respondent gave no reason for the revocation.

[67] Aggrieved by this purported revocation, the appellant applied for a judicial review which, however, was dismissed by the High Court of Kuala Terengganu; and this dismissal led to the present appeal.

[68] I am allowing the appeal for the following reasons.

Revocation Was Contrary To s. 80(3) Of The NLC

[69] In my judgment, I accept the submission of learned counsel for the appellant, Tun Salleh Abas, that under the National Land Code the new State Executive Council/State Authority had no power to reject the payment and to cancel the approval to alienate which had been given earlier, once the payment as required by the Form 5A notices issued to the appellant (pursuant to ss. 81 and 82 of the NLC) had been duly made by the appellant. There is no provision – expressed or implied – that gives the State Authority the power to revoke an approval to alienate once the Form 5A payment had been made. On the contrary, and to my mind, once the Form 5A payment had been made by the applicant/appellant, the operation of s. 80(3) of the NLC was triggered, and it was then mandatory for the Registrar to 'prepare, register and issue a qualified title in respect of the land'. Section 80(3) provides:

> (3) Subject to subsection 81(2), upon the approval of the alienation of any land by the State Authority under this Act and upon payment of all fees the Registrar shall prepare, register and issue a qualified title in respect of the land.

[70] In other words, once payment had been made it is too late then for the State Authority to reverse its earlier decision made approving the alienation. In my judgment, at this late stage the only situations where the earlier decision to alienate could lawfully be revoked by the State Authority is where the decision to approve was made as a result of a material misrepresentation on the part of the applicant (as subsequently discovered by the State Authority); or where in the first place the alienation could not have been be lawfully made (say, for example, the lots in question had already been alienated to someone else, meaning that they already had a registered owner or owners); or where the approval

was made as a result of a genuine mistake on the part of the State Authority in relation to a material fact. But the present case is not a case of a material misrepresentation; nor is it a case of unlawful alienation; nor is it a case of a genuine mistake in respect of a material fact having been made.

[71] The learned State Legal Adviser, Encik Norbahari, in his submission, argues that in spite of the earlier approval to alienate and the issuance of Form 5A notices and the payment, nevertheless, the State Authority still has the power to revoke the approval to alienate. This is so (he contends) by virtue of s. 78(3) of the NLC. This provision reads:

> (3) The alienation of State Land shall take effect upon the registration of a register document of title thereto pursuant to the provisions referred to subsection (1) or (2), as the case may be; and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State Land until that time.

[72] The learned State Legal Adviser refers to *Dr. Ti Teow Siew & Ors. v. Pendaftar Geran-Geran Tanah Negeri Selangor* [1981] CLJ 134; [1981] CLJ (Rep) 142.

[73] With respect, in my judgment, sub-s. (3) of s. 78 does not, either expressly or by implication, confer any power to the State Authority to revoke an approval that has already been given at the whim and fancy of the State Authority – or even in a case where there is a change in policy. And all the more so where the statutory Form 5A payment has been duly made pursuant to sub-s. (2) of s. 81. All that sub-s. (3) of s. 78 says is that alienation of State Land takes effect upon registration, and that the land in question remains State Land pending registration. In other words, the provision declares as to when alienation legally takes place (that is upon registration), and as to the status of the land pending (or prior to) registration. But that is all that the provision says. The provision does not deal with the exercise of the power to alienate by the State Authority. Indeed, if one is placing reliance on sub-s. (3) of s. 78, then one must also not overlook sub-s. (2) of s. 78. This subsection (2) stipulates:

> (2) The alienation of State Land under qualified title shall be effected in accordance with the provisions of Chapter 2 of Part Eleven.

[74] And if we were to refer to Chapter 2 of Part Eleven of the NLC, we will find the provision, namely, s. 180, that states:

> **Qualified title to be registered and issued upon approval of alienation.**
>
> 180. (1)Where approval of the State Authority to alienation of any land whether under this Act or under the provisions of any previous land law has been given, subject to subsection 80(3), documents of qualified title shall be prepared, registered and issued by the Land Administrator or Registrar, as the case may be.

[75] With respect, the case of *Dr. Ti Teow Siew & Ors*, cited by the learned State Legal Adviser, is irrelevant as the facts of that case is different from the facts of the present case. That case does not concern the revocation of a prior approval to alienate by the State Authority; nor does the case concern s. 80(3) or Form 5A. Moreover, the case was decided in 1981 when the present sub-s. (3) of s. 80 was not yet in existence. The present sub-s. (3) of s. 80 was introduced in 1984 and came into force in 1985 (more will be said about the new sub-s. (3) of s. 80 and the old sub-s. (3) of s. 80 later in this judgment).

[76] The learned State Legal Adviser takes the position that the State Authority has unfettered discretion under the National Land Code whether or not to revoke an approval to alienate that had been given and communicated to the applicant in question. With respect, I am unable to share that proposition, particularly, in the present case where the statutory Form 5A payment had duly been made by the applicant and the operation of s. 80(3) had been triggered. To allow the approval to be revoked at this stage is to condone a grave injustice. I cannot allow the court to be a mere helpless bystander where an act of injustice stares you in the face. In this regard, I am reminded by what Raja Azlan Shah Ag. CJ (as he then was) said in *Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn. Bhd.* [1978] 1 LNS 143; [1979] 1 MLJ 135 (at p. 148):

> Applying the principles stated above, what is the effect of the condition under consideration? I read the affidavit of the Chairman, Land Executive Committee as claiming an unfettered discretion to grant or reject any application under section 124 or impose such conditions or other requirements as the Committee think fit. I cannot subscribe to this proposition for a moment. Unfettered discretion is a contradiction in terms. My understanding of the

authorities in these cases, and in particular the case of *Pyx Granite (ante)* and its progeny compel me to reject it and to uphold the decision of the learned judge. It does not seem to be realized that this argument is fallacious. Every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. The courts are the only defence of the liberty of the subject against departmental aggression. In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen: so that the courts can see that these great powers and influence are exercised in accordance with law. I would once again emphasize what has often been said before, that "public bodies must be compelled to observe the law and it is essential that bureaucracy should be kept in its place", (per Danckwerts LJ in *Bradbury v. London Borough of Enfield*.)

Bad Faith

[77] Another reason for my decision is that in my view – and I am in agreement with the submission of learned counsel for the appellant – the decision by the State Authority to revoke the earlier approval was done in bad faith. Bad faith can be inferred from the following facts. Firstly, there was the refusal by the first respondent to accept the Form 5A statutory payment when a representative of the appellant went to the Land Office Dungun on 22 March 2004 to make the payment; and no reason was given by the first respondent when he declined to accept payment. This refusal to accept payment was unlawful as, under the law, once the Form 5A notices had been issued, it was legally incumbent upon the applicant/appellant to make the payment; and, once payment was tendered, it was then the statutory duty of the District Land Administrator to accept the payment. And this is particularly so if one were to refer to s. 80(3).

[78] In the present case, the purported revocation of the earlier approval by the new State Executive Council could not have been the reason for the refusal to accept payment because the decision to revoke was only made by the new State Executive Council on 7 April 2004.

[79] Encik Ibrahim bin Mohamad, the Chief Assistant District Land Administrator of Dungun at the material time, did not in his affidavit deny the allegation that the first respondent refused to accept the payment when it was first made on 22 March 2004. But he also did not explain why there was this refusal to accept the payment. A major part of his affidavit focused on the new forestry policy of the new State Executive Council which held its first meeting on 7 April 2004, but his evidence does not state as to when the new forestry policy came into being. Indeed, in his affidavit he conveniently avoids addressing the appellant's allegation of the refusal on his part to accept the payment on 22 March 2004.

[80] It is my finding that this refusal to accept the payment was unreasonable, unlawful and was done in bad faith.

[81] Secondly, there was the directive issued by the said Haji Hashim bin Mamat, who was then a Deputy State Director of Lands and Mines, and who issued the directive by representing himself as the 'State Director of Lands and Mines'. I have alluded to Hj. Hashim and his directive earlier in this judgment. In my judgment, the purported directive was not only unlawful but was also unreasonable and was done in bad faith. Now it is not disputed that after 11 March 2004 and right until 19 April 2004 the post of State Director of Lands and Mines was vacant, meaning that on 23 March 2004 there was no one holding the post of State Director of Lands and Mines. Haji Hashim bin Mamat was only a Deputy State Director of Lands and Mines when he issued the directive of 23 March 2004. Remarkably the respondents did not file any affidavit by Haji Hashim to explain as to why he represented himself as the State Director of Lands and Mines when he was not and as to why he issued the directive of 23 March 2004. Therefore, the fact as to why Hj. Hashim represented himself as the 'State Director of Lands and Mines' when he was not, and why he issued the directive of 23 March 2004 remains unexplained. Strangely, neither the affidavit of Encik Ibrahim bin Mohamad nor the affidavit of Dato' Mukhtar makes any reference at all to this written directive of Hj. Hashim. If not for the affidavit of Dato' Tengku Hassan bin Tengku Omar, filed on behalf of the appellant, whose affidavit exhibits the said directive of Hj. Hashim, the court would not have known the existence of this unlawful directive. Significantly, Dato' Tengku Hassan was the State Director of Lands and Mines from 1 January 2002 right until 11 March 2004.

[82] Now, in my judgment, it was unlawful for Hj. Hashim to have represented himself as the 'State Director of Lands and Mines' when he was not holding such a post; and it was also unlawful (and also unreasonable) for him to have issued such a directive. It is true that under the NLC generally a Deputy State Director of Lands and Mines (and a State can have more than one Deputy State Director; but there is no evidence that Hj Hashim was the only Deputy State Director at the time when he issued the directive) may exercise the power of the State Director of Lands and Mines (see the definition of 'State Director' in s. 5 of the NLC). But here is not a case of a Deputy State Director of Lands and Mines exercising the power of the State Director of Lands and Mines. Instead, here is a case where a Deputy State Director of Lands and Mines representing himself as the State Director of Lands and Mines, when he was not; and on top of that issued a directive when he did not have the power to do so.

[83] Thirdly, the first respondent does not explain as to why the cheques sent by the appellant's solicitors were kept by him for almost three weeks before they were returned together with the revocation letter of 15 April 2004. If the payment of 22 March was instantly declined, and this refusal to accept payment was done *bona fide*, as claimed by the respondents, then why were the cheques not instantly declined as well? Why were they, instead, kept for almost three weeks? I am not for a moment suggesting that the cheques should have been instantly sent back to the appellant. On the contrary the payment should have been accepted and the qualified title issued by the registrar as required by s. 80(3). But the first respondent must explain this inconsistent conduct on his part. In the absence of a plausible explanation, the conduct must be taken not to be *bona fide*.

[84] Fourthly, the purported revocation was contrary to the National Land Code. Once the Form 5A statutory payment had duly been made, the registrar must proceed to issue a qualified title as stipulated by s. 80(3) and s. 180(1) of the National Land Code.

[85] Fifthly, Encik Ibrahim bin Mohamad in his letter of 15 April 2004 (writing on behalf of the first respondent) failed to furnish any reason whatsoever for the revocation by the new State Executive Council of the earlier approval by the previous State Executive Council. The State Authority cannot arbitrarily revoke the approval earlier given. It must give the appellant – the

A adversely affected party – an explanation. Why was the appellant kept in the dark about the reason for the revocation? Fairness and good governance require the State Authority to give a reason for the revocation. In *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan*
B [1999] 3 CLJ 65, Edgar Joseph Jr. FCJ in delivering the judgment of the Federal Court says (at p. 119):

> ... people expect fairness in their dealings with those who make decisions affecting their interests.

C **[86]** And if I may add here, the District Land Administrator, in his letter, conveniently ignored the fact that Form 5A notices had already been issued. Indeed, the letter of purported revocation makes no mention whatsoever of the status of the Form 5A notices. So here we have an anomalous situation where the
D alienation approval was purportedly revoked, cheques returned, but the Form 5A notices requiring payment, that had already been issued and acted upon (that is to say, payment already made), were neither cancelled nor withdrawn.

E **[87]** In the present case, the first time an explanation was given in respect of the purported revocation was when the respondents filed their affidavits after leave to file an application for judicial review had already been obtained by the appellant. In my judgment, the reasons given in the affidavits of Encik Ibrahim bin
F Mohamad and Dato' Mukhtar for the revocation of the approval cannot be accepted by this court. In the first place, I have serious doubts as to whether the reasons given are *bona fide*. If indeed they are *bona fide* reasons, as the respondents claim, then, why was the appellant not informed of the reasons in Encik
G Ibrahim bin Mohamad's letter (writing on behalf of the first respondent) of 15 April 2004? In my judgment the reasons given in the affidavits of Encik Ibrahim bin Mohamad and Dato' Mukhtar, about the change in the policy of the State, are nothing more but belated attempts to rationalize the decision to revoke the
H earlier approval given by the former State Executive Council.

[88] Furthermore, both Encik Ibrahim bin Mohamad and Dato' Mukhtar were not parties to the decision making process of the new State Executive Council. Hence their affidavit evidence is only
I hearsay. A member of the State Executive Council who was privy to the decision of 7 April 2004 ought to have affirmed an affidavit to explain the reason behind the revocation of the approval. Dato' Mukhtar became the State Director of Lands and Mines only on

20 April 2004 whereas the decision to revoke by the new State Executive Council was made before that, that is, on 7 April 2004. And as for Encik Ibrahim bin Mohamad, he was only the Chief District Land Administrator of Dungun at the material time. Neither Encik Ibrahim nor Dato' Mukhtar was present at the meeting of the new State Executive Council on 7 April 2004 when the decision to revoke was made. Neither Encik Ibrahim nor Dato' Mukhtar was involved in preparing the State Executive Council paper when the matter was brought up before the new State Executive Council on 7 April 2004. Neither Encik Ibrahim nor Dato' Mukhtar had clearly stated in their affidavits that they had access either to the State Executive Council paper or to the minutes of the State Executive Council meeting of 7 April 2004. Neither Encik Ibrahim nor Dato' Mukhtar states in their affidavits that their source of information as to the reason for the revocation by the new State Executive Council was based either on the State Executive Council paper or on the minutes of the State Executive Council meeting of 7 April 2004. Paragraph 2 of the affidavits of Encik Ibrahim and Dato' Mukhtar was only in general terms and that is (to take para. 2 of Dato' Mukhtar's affidavit as an example):

> 2. Perkara-perkara yang diikrarkan di sini adalah di dalam pengetahuan saya dan/atau daripada dokumen-dokumen yang ada dalam milikan dan/atau simpanan saya yang berada di pejabat saya dan/atau pejabat Respondent Pertama dan atau Pejabat Setiausaha Kerajaan Negeri Terengganu yang saya mempunyai akses melainkan dinyatakan sebaliknya.

[89] In any case, the explanations of Encik Ibrahim and Dato' Mukhtar in their affidavits are general and vague in nature. The gist of the explanations is that there was a change in policy with regard to the preservation and alienation of forest reserves when the new Barisan Nasional Government took over the administration of the State. But I am unable to accept this as the real reason. If this is the real reason, then why was this reason not made known to the appellant when the first respondent by letter returned the cheques to the appellant informing the appellant that the earlier approval had been revoked?

[90] In this regard, it is to be observed that, in purporting to revoke the earlier approval, there is no suggestion by the respondents of any material misrepresentation on the part of the applicant; or of the previous State Executive Council having acted unlawfully or under a genuine mistake in approving the alienation

to the appellant. Indeed, Encik Norbahari, the learned State Legal Adviser, in his written submission, also does not suggest that there had been any material misrepresentation on the part of the appellant or that the State Authority had acted unlawfully or had acted under a genuine mistake in earlier approving the lots to the appellant.

[91] It is my finding that the refusal by the first respondent to accept the payment when it was tendered on 22 March 2004, the purported directive of Hj. Hashim issued the following day on 23 March 2004, the keeping of the appellants' two cheques by the first respondent for three weeks without acting on them, and the revocation of the approval by the new State Executive Council on 7 April 2004, all these acts are interlinked. What Encik Ibrahim bin Mohamad did on 22 March 2004 (in refusing to accept payment), what Hj. Hashim did on 23 March 2004 (in issuing the directive), what the first respondent did (in keeping the cheques for three weeks and not processing the payment), and what the new State Executive Council did on 7 April 2004 (in revoking the earlier approval) are not individual, isolated and independent acts: they are all interconnected. All these acts, to my mind, are unreasonable, unlawful and *mala fide*, if not individually, then, if taken cumulatively.

[92] In this connection, and in contrast to the affidavits of Encik Ibrahim bin Mohamad and Dato' Mukhtar, I wish to refer to the affidavit of Dato' Ibrahim bin Abdul Rahman, the State Director of Lands and Mines at the time of the earlier approval by the State Authority. He was the State Director of Lands and Mines from December 1999 until December 2002. His affidavit states:

> 1. Pada semua masa material saya adalah Pengarah Tanah dan Galian Negeri Terengganu.
>
> 2. Saya mula memegang jawatan ini pada 15hb Disember, 1999 dan melepaskan jawatan itu pada bulan Disember, 2002 apabila saya ditukarkan menjadi Pegawai Kewangan Negeri. Pengganti saya sebagai Pengarah Tanah dan Galian Negeri Terengganu ialah Yang Mulia Tengku Hassan bin Tengku Omar. Selepas itu saya bersara daripada Perkhidmatan Awam Negeri Terengganu kerana cukup umur bersara wajib.
>
> 3. Izinkan saya merujuk kepada affidavit-afidavit berikut:
>
> (i) Afidavit Zaman bin Abdullah yang diikrarkan pada 24hb Mei 2004 yang difailkan di Mahkamah Yang Mulia ini.

(ii) Afidavit Ibrahim bin Mohamad yang diikrarkan pada 5hb Januari 2005 yang difailkan di Mahkamah Yang Mulia ini.

(iii) Afidavit Mohd Mukhtar bin Ismail yang diikrarkan pada 6hb Januari 2005 yang difailkan di Mahkamah Yang Mulia ini.

4. Saya tahu mengenai dengan permohonan yang dibuat oleh pemohon (NEP) ke atas tanah di kawasan Hutan Simpan Paka Mukim Besol dan Hulu Paka Dungun untuk pembangunan ladang kelapa sawit dan ternakan lembu.

5. Permohonan ini dikaji oleh UPEN dan selepas itu diangkat pada Majlis Mesyuarat Kerajaan Negeri (MMKN) untuk mendapat keputusan selanjutnya.

6. MMKN telah memberi kelulusan dasar pada 27hb. November, 2000. Selepas itu permohonan ini dan kelulusan dasar oleh MMKN diedarkan kepada saya untuk diambil tindakan seterusnya.

7. Saya telah mengadakan satu mesyuarat Jawatankuasa Teknikal yang mengandungi beberapa buah jawatan Kerajaan berikut:

(i) Unit Perancang Ekonomi Negeri (UPEN)
(ii) Jabatan Perhutanan
(iii) Jabatan Pertanian
(iv) Jabatan Alam Sekitar
(v) Jabatan Mineral dan Geosains
(vi) Jabatan Perkhidmatan Haiwan; dan
(vii) Jabatan Perairan dan Saliran

8. Mesyuarat ini bermaksud untuk mendapat pandangan-pandangan dan nasihat-nasihat daripada Jabatan-Jabatan tersebut supaya pandangan-pandangan dan nasihat-nasihat itu diangkat kepada MMKN untuk diteliti ketika mengimbangkan permohonan ini dan diambilkira oleh MMKN ketika membuat keputusan muktamad ke atas permohonan pemohon ini.

9. Mesyuarat Jawatankuasa Teknikal itu bersidang pada 25hb. April, 2001 dipengerusikan oleh saya dan dihadiri oleh semua Jabatan-jabatan yang tersebut di atas dan juga Pentadbir Tanah Dungun dan penolongnya.

10. Masing-masing pegawai yang hadir membuat penilaian dan mengeluarkan pandangan, tetapi pada hemat saya tidak ada satu jabatanpun yang membantah atau menghalang ke atas permohonan pemohon. Salah satu daripada keputusan

mesyuarat ialah tiap-tiap jabatan hendaklah mengemukakan ulasan bertulis kepada PTG (merujuk kepada eksibit MM1-1 para 3).

11. Selaras dengan keputusan mesyuarat Jawatankuasa Teknikal tiap-tiap jabatan telah menghantar kepada jabatan saya PTG Terengganu ulasan-ulasan mereka yang terperinci (merujuk kepada Eksibit MM1-2).

12. Seperti pandangan yang mereka beri dalam mesyuarat, tiada satu jabatanpun dalam ulasan bertulis mereka, yang memberi maksud menghalang atau membantah pada permohonan pemohon ini.

13. Kemudian saya mengangkat pandangan-pandangan dan ulasan- ulasan ini kepada MMKN untuk dipertimbangkan dan diambilkira olehnya ketika membuat keputusan muktamad ke atas permohonan pemohon.

14. Akhirnya MMKN telah meluluskan permohonan pemohon pada 30hb. Januari, 2002 (merujuk kepada Eksibit ZA-6 Afidavit Zaman bin Abdullah para 11 yang diikrarkan pada 24hb. Mei, 2004).

15. Selepas itu tindakan seterusnya diambilkira oleh PTG untuk mengeluarkan Borang 5A dan menuntut bayaran ke atas lot-lot yang sudah dibebaskan oleh Pejabat Perhutanan apabila kayu balak di atas kawasan tersebut sempurna dikeluarkan. (Merujuk kepada Eksibit ZA-6).

16. Oleh kerana pandangan-pandangan, ulasan-ulasan dan nasihat-nasihat daripada Jabatan-Jabatan yang saya sebut dalam Afidavit ini maka saya anggap dan faham bahawa pandangan-pandangan, ulasan-ulasan dan nasihat-nasihat itu telah diteliti oleh MMKN dan telah diambilkira semasa menimbangkan permohonan pemohon dan berpandukan kepada pandangan-pandangan, ulasan-ulasan dan nasihat-nasihat yang dinyatakan, maka MMKN yang bersidang pada 30hb. Januari, 2002 telah meluluskan permohonan pemohon secara muktamad. (merujuk kepada Eksibit ZA-6).

[93] It is to be observed from the above affidavit that Dato' Haji Ibrahim Abdul Rahman, as the then State Director of Lands and Mines, prepared and submitted the State Executive Council paper that led to the council's decision of 30 January 2002 approving the alienation of the eight lots and the subsequent issuance of the

Form 5A notices and the letter of 11 January 2004. I find the affidavit evidence of Dato' Haji Ibrahim as being credible as compared to the affidavit evidence of Encik Ibrahim and Dato' Mukhtar.

Principle Of Legitimate Expectation

[94] A further reason for my decision is this. In my judgment the revocation of the earlier approval by the new State Executive Council was contrary to the principle of legitimate expectation. Professor de Smith in his book *Judicial Review of Administrative Action* (5th edn.) states (at para 13-035):

> Although free to alter its policy, the authority is by no means free to ignore the existence of a legitimate expectation. Now that legitimate expectation has been accepted in law as an interest worthy of protection, its existence becomes a relevant consideration which must be taken into consideration in the exercise of a discretion. It is placed on the scale and must be properly weighed.

[95] In dealing with the balancing exercise, Prof, de Smith, in his book, said (in the same para):

> The weighing is, as we have noted many times, a matter principally for the authority, but the courts may intervene where the expectation is entirely ignored or given manifestly improper weight (see *R. v. Inland Revenue Commissioners ex p. M. F. K. Underwriting Agencies* [1990] 1 WLR 1545 per Bingham LJ when he said breach of an expectation may be unfair 'particularly' if the promisee acted on it. Cf. the approach of Laws J in *Secretary of State for Transport, ex p. Richmond-upon-Thames LBC* [1994] 1 WLR 74). On the other hand, in *R. v. Ministry of Agriculture, Fisheries and Food ex p. Hamble (Offshore) Fisheries Ltd.* [1995] 2 All ER 714, Sedley J accepted the existence of substantive legitimate expectation.

[96] The above principles were adopted by the Federal Court in *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65.

[97] In the present case, to my mind, there is a legitimate expectation on the part of the appellant that they be issued with the titles in respect of the eight lots. This is because, relying on the earlier approval by the State Authority, they had already made

the statutory Form 5A payment; and they had placed their hopes on the words 'upon payment of all fees the registrar shall prepare, register and issue a qualified title in respect of the land.' as found in s. 80(3) of the NLC; and there is also the provision of s. 180(1) of the NLC. There is also in my judgment a legitimate expectation on the part of the appellant to be given reason for the revocation of an earlier approval, particularly, where the statutory payment had already been made – where it was made twice and unlawfully rejected twice.

[98] Encik Norbahari, the learned State Legal Adviser, in contending that the approval of the State Executive Council did not confer upon the appellant any legitimate expectation, relies on the unreported case of *Rahmah Ali & Ismail bin Awang v. Government of Pahang High Court (Kuantan)* Civil Suits Nos. 436 and 456 of 1977. In this case the plaintiffs made an application to the defendant, the Government of Pahang, for the alienation of a piece of land in the District of Kuantan. Subsequently, the plaintiffs paid to the defendant the premium and other fees in respect of the alienation. Later, however, the defendant wrote to the plaintiffs informing them that the approval of the land had been withdrawn and that all fees paid would be refunded to them. The plaintiffs contended that, in revoking the said approval, the defendant had compulsorily acquired the land and had not adequately compensated them pursuant to art. 13 of the Federal Constitution. Alternatively, the plaintiffs contended that the revocation of the approval was in breach of contract and they had suffered loss and damage.

[99] Regarding the first contention (and for the purpose of this judgment I need only to touch on the first contention), Razak J said (at p. 85):

> That is a forceful argument. But it is difficult to see how effect could be given to that contention when section 78(3) clearly says that a land shall remain State Land until it is registered. It is a fact that although the land had been approved for alienation, it had never been registered. The land, in other words, is still State Land and the plaintiffs have no title to it. The defendant could therefore re-posses it at any time they so chose.

[100] In my judgment the above-quoted judgment is irrelevant for the purpose of the case at hand. Firstly, the principle of legitimate expectation was not an issue in Rahmah binti Ali. Secondly, the provision of sub-s. (3) of s. 80 of the NLC then was different. At the time of the judgment of Razak J, the provision of s. 80(3) reads:

> (3) The approval of the State Authority to the alienation of any land under this Act may be given subject to the condition that qualified title be applied for within specified period; and if in any such case the period so specified expires without any such application having been made, the approval shall thereupon lapse.

[101] But the above provision had been repealed a long time ago. The present sub-s. (3) of s. 80 was introduced by s. 28 of the National Land Code (Amendment) Act 1984 (Act A587) which came into force on 25 March 1985. The present sub-s. (3) of s. 80 now reads:

> (3) The alienation of State Land shall take effect upon the registration of a register document of title thereto pursuant to the provisions referred to subsection (1) or (2), as the case may be; and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State Land until that time.

[102] In conclusion I am granting the reliefs prayed for and referred to at the beginning of this judgment.

[Appeal allowed with costs]